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(2)

allotted by the High Court Legal Services Committee

Single Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.).

CRIMINAL APPEAL NO. 2143 OF 2000.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

APPELLANT :: KAMAL KUMAR SAHU,
In Jail
son of Bhaklu Sahu, aged about 50 years
Resident of Selibandha, Raipur, Distt.
Raipur, (M.P.).

(V e r s u s)

RESPONDENTS :: THE STATE OF MADHYA PRADESH .

(13)

CRIMINAL APPEAL NO.2143 OF 2000

Kamal Kumar Sahu

Versus

The State of Chhattisgarh.

J U D G M E N T

Post it for: 29/08/2001.

Sd/-
R.S. Garg
Judge

28/08/2001.

Markhams
GA
29.8.2001

Srishna
Adv
29/8/2001
Adv. for appellant-

(14)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

CRIMINAL APPEAL NO.2143 OF 2000

Kamal Kumar Sahu

Versus

The State of Chhattisgarh.

J U D G M E N T

Per R.S. Garg, J :-

The appellant being aggrieved by the judgment dated 28/06/2000 passed in Special Case No.80 of 1999 by the learned Special Judge (NDPS), Raipur convicting the appellant under Section 20 (b)(i) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentencing him to undergo R.I. for two years and pay fine of Rs.2,000/-, in default of payment of fine to undergo further R.I. for two months, has filed this appeal.

(2) The prosecution case in brief is that on 03/10/1999 Assistant Sub Inspector of Police Station Dhamtari, Shri Ashok Dwivedi received an information at about 3.30 in the night that in a bus two persons were bringing Ganja. After performing the formalities the said Sub Inspector of Police proceeded towards the spot. On arrival of the bus it was stopped, the driver and conductor of the bus were given the information and thereafter the search of persons sitting in the bus were taken. The

occupant of seat No.29 became non-plus. The two persons were boarded down from the bus. Notice under Section 50 was given to the present appellant and with his consent his search was taken. In the search of the air-bag belonging to the accused 5.500 kg Ganja was recovered. Two samples of 100 gram each were taken out and thereafter the balance contraband and the samples were sealed. Panchanamas were made on the spot, the bus ticket was seized and thereafter the accused was brought to the police station where the F.I.R. was registered, the accused was arrested and the sealed articles were deposited in the Malkhana. Copies of the documents alongwith the information were sent to the Sub Divisional Officer (Police) Dhamtari. The seized articles were sent to the Forensic Science Laboratory who under their report (Ex.P/20) informed the police that the samples were of Ganja. On completion of the investigation challan was filed against the accused who having denied the charges was put to trial. After recording the evidence and hearing the parties learned Court below convicted and sentenced the accused as referred to above.

(3) Learned counsel for the appellant submits that as PW-7 Ashok Dwivedi has failed in proving the compliance of Sections 42, 50 and 57 of the Act the accused deserves to be acquitted.

(4) Shri Jajodiya, learned counsel for the State, on the other hand, submitted that from a perusal of the statements of the witnesses examined during the course of the trial it would clearly appear that every mandatory provision of law was observed. He further submits that the quantity of Ganja would rule out every possibility of

false implication.

(5) PW-7 Ashok Dwivedi after receiving the information recorded the same in writing and thereafter prepared a Panchanama. Finding that if he awaited the search warrant the accused persons could run away or could cause disappearance of the contrabands he prepared yet another Panchanama and sent the information to the Sub Divisional Officer (Police). The informations were recorded in the Ronjnamcha Sanha and thereafter he proceeded towards spot. After stopping the on-coming bus he required the accused to board down from the same and gave him a notice under Section 50. As the accused after receiving Ex.P/6 gave his consent under Ex.P/7 his search was taken. In the search, according to the witness, 5.500 Kg Ganja was recovered. Ganja was weighed on the spot under Ex.P/1. According to him the samples were drawn and thereafter the remaining Ganja and the samples were properly sealed. According to him, from another person Mangalram also Ganja was recovered. He submits that he brought the accused persons and the contrabands along with the samples to the police station where he made the entry in Rojnamcha Sanha No.172 and also registered the first information report. From the statements of this witness it does not appear that he committed any violation of Sections 42, 50 or 57. PW-1 Kanhaiyalal supporting PW-7 Ashok Dwivedi had clearly stated that he had weighed the Ganja on the spot. PW-2 Manoj Sharma had also supported the case of the prosecution and had clearly stated that he was informed about the information received from the informer. According to him, after stopping the on coming bus the accused were required to board down and thereafter the notices under Section 50 were given to them and their consent was obtained.

According to him in the search Ganja was recovered from each accused and from the present appellant 5.500 Kg Ganja was recovered. He has also testified that the bus ticket was also recovered and seized from the appellant. In his cross-examination nothing important has been brought on record. PW-3 Ramesh is Malkhana incharge. He has clearly stated that the sealed packets containing the samples and Ganja were given to him which were kept by him in the Malkhana. In support of his contention he had produced the original register in the Court. It is note worthy that not even a single question was put to this witness. PW-4 Shiv Prasad was the conductor of the bus in which the accused persons were coming. He has supported the statements of PW-7 Ashok Dwivedi. PW-5 Vinod Kumar Tiwari was Station House Incharge of the Police Station at the relevant time. He had clearly stated that after registration of the first information report the articles were given to the Malkhana incharge and thereafter copies of Panchanamas, seizure memo, arrest memo etc. were sent to the Sub Divisional Officer (Police). He has also proved the receipt which is submitted in the Court at Ex.P/15. He had further stated that a copy of the first information report was sent to the Special Judge. According to him the samples were sent to the Forensic Science Laboratory who in their turn under Ex.P/20 certified that the samples were of Ganja. PW-6 C.P. Shukla was Sub Divisional Officer of Police. He had certified that he received the informations relating to the informer's information and the subsequent informations about the search, seizure anrest etc.. From his statements it clearly appears that Sections 42 and 57 were complied with in their true spirit. After going through the entire records I am unable

to hold that the prosecution failed in proving its case. The Court below was justified in convicting the appellant.

(6) It was lastly contended that the accused who has been awarded two years R.I. appears to be in jail since 04/10/1999, therefore, the sentence be reduced to the period already undergone. I have considered the said argument also. From the records it appears that by now the accused has undergone one year, ten months and twenty three days jail sentence. In absence of any evidence on record that the accused is actively engaged in business of narcotics, I consider present to be a fit case where the jail sentence should be reduced to the period already undergone.

(7) While maintaining the fine amount and the default sentence I reduce the substantive jail sentence to the period already undergone.

(8) The appeal to the extent indicated above is allowed.

(9) Let a copy of this judgment be sent immediately to the trial Court which in its turn shall inform the jail authorities that if the accused has already deposited the fine amount then he be immediately released if not required in any other case.

Sd/-
R.S. Garg
Judge
29/08/2001.

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